



SCOTTSDALE BOARD OF ADJUSTMENT
3939 N. Drinkwater Boulevard
Kiva at City Hall
Scottsdale, AZ
April 7, 2004
6:00 PM
APPROVED MINUTES

PRESENT: James Vail, Chair
Terry Kuhstoss, Vice Chair
Jennifer Goralski, Board Member
Carol Perica, Board Member
Ernest Jones, Board Member
Howard Myers, Board Member

ABSENT: Neal Waldman, Board Member

STAFF: Donna Bronski
Kurt Jones
Tim Curtis
Keith Neiderer

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above. Chair Vail noted that Neal Waldman had contacted the Board and advised that he would not be able to attend this evening.

APPROVAL OF MINUTES

APPROVED 5-5-2004

1. March 3, 2004

Commissioner Goralski moved to approve the minutes. Commissioner Myers seconded the motion. The minutes were approved by a vote of six (6) to zero (0).

REGULAR AGENDA

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment, as well as public hearing procedures. He pointed out that, as one of the Commissioners was absent, he would be amenable to a request for a continuance from either of the two applicants if they so desired.

2. **4-BA-2004 (Brashear Residence)** request by Jay M Brashear, applicant/owner, for a variance from Article V. Section 5.504.E regarding a yard setback on 7,268 Sq. Ft. parcel located at 8002 E Monte Vista Road with Single Family Residential (R1-7) zoning.

(At this point the staff was introduced by Chair Vail.)

MR. CURTIS presented the case per the staff packet. He reviewed the four criteria and also showed photos of the existing structure, which is under construction. He stated that the applicant did receive a Notice of Violation for constructing without permits and is here today trying to get a variance to allow the structure to be completed. Construction is on hold until further notice from the Board of Adjustment, and proper issuance of permits.

MR. CURTIS responded to Chair questions.

MR. BRASHEAR addressed the Board regarding the four criteria, which he feels he has met.

(Chair Vail opened public comment.)

MR. BOB HATLER, 7815 E. Monte Vista Road, spoke to the variance request and expressed concern as to the shed hindering community appearance. He stated that he wants the Board to give it a lot of thought.

MR. BRASHEAR responded that the neighborhood is wonderful, and if anybody is in complaint of the structure, that was not the intent - to bother anyone. Mr. Brashear reiterated that the final plan is designed to look good, and includes a fence around the structure, built to code, not a flapjack operation.

(Chair Vail closed public testimony.)

VICE CHAIR KUHSTOSS believes that the criteria has not been met, and does not think that the Board should perpetuate the existing code violation. She noted there is room in the backyard to put storage and is concerned about a structure being built that close, because Hayden is a very busy street, with potential to being expanded. And if this is allowed, then some properties would have to be condemned, if they are being used for anything other than open space, in order to widen the street. She would not support the variance.

BOARD MEMBER JONES stated that after viewing the structure, it looked more like a blossoming out of the property rather than a degradation of the property. When and if completed, the project would enhance the neighborhood rather than hurt it. This is a positive and he is willing to support the request.

COMMISSIONER PERICA reiterated that the position of the Board is to adhere to the Zoning Ordinance and the four criteria. She doesn't believe that this request meets any of the four criteria. The Commissioner doesn't agree with this variance and votes not to approve it.

BOARD MEMBER MYERS sympathizes with the applicant wanting more room, and maybe the last criteria could be met because he doesn't think the structure will be detrimental to the neighborhood once it's completed. However, he believes that the other three criteria have not been met. Commissioner Myers also stated that it's the Board's job to make sure city codes are followed, not necessarily to render what we would like to do or what we would do if we owned the property. Since the other criteria have not been met, he cannot support it.

COMMISSIONER GORALSKI doesn't believe that three of the four criteria have been met and would be unable to support the variance.

CHAIR VAIL believes that only the fourth criteria has been met. He also remarked that he's always advocated improvements to the historic neighborhoods, as his voting record indicates. However, he cannot find the first three criteria having been met. He must also vote in opposition to the proposal.

CHAIR VAIL extended the applicant the opportunity to request a continuance before the vote was taken in hopes that the unavailable Board Member could be persuaded to vote in favor of his request. He explained the procedures to follow if his proposal is defeated.

After explaining to the applicant again of his opportunity to request a continuance and the procedures to follow if the proposal is denied, the applicant declined the option for a continuance, stating there is a neighbor bothered by his request and that was not the intention. Also, Mr. Brashear remarked that the Board has spoken; however, he does appreciate that the Board understands, yet has to support the

law. Applicant doesn't expect a continuance to change the outcome and is not really sure he wants it anyway.

The Chair thanked Mr. Brashear and stated that the Board gratefully acknowledges everyone who works to improve and enhance the historic neighborhood.

Vice Chair Kuhstoss moved to deny the requested variance. Commissioner Perica seconded the motion. The motion passed by a vote of five (5) to one (1), with Commissioner Jones voting "Nay".

3. **5-BA-2004 (La Reggia Residence)** request by Celebrity Homes, applicant, Phil Dawson, owner, for a variance from Article V. Section 5.204G regarding wall heights within the required front yard on a .74+/- acre parcel located at 9494 E Taro Lane with Single Family Residential, Environmentally Sensitive Lands, (R1-35 ESL) zoning.

MR. NEIDERER presented the case per the staff packet. He indicated staff's findings with regard to the four criteria. He indicated that staff had received a fax from the property owner directly to the north objecting to the variance, although this person was not present this evening. A telephone call from the HOA Board wanting more generic information was received as well. No one from the HOA Board is present.

MR. NEIDERER responded to Board questions.

MR. FELLMAN, the applicant contact person, addressed the Board. He stated that he is requesting a variance for a fence location, as well as a height increase of the fence. He feels that he has met all four of the required criteria.

MR. FELLMAN responded to the following Board questions:

BOARD MEMBER MYERS asked how Celebrity came by the property. Mr. Fellman replied that it had purchased 10 lots in the subdivision and developed and plotted the houses on the lots. Commissioner Myers wanted to know whether the home was built as a spec home or a purchased home. Mr. Fellman informed Commissioner Myers that it had been purchased by Roger Fitness.

COMMISSIONER GORALSKI inquired as to the approximation of where the pool and spa would be in relation to the allowed wall and the proposed wall. Mr. Fellman let her know that the pool is 32' long by 16' deep. Board Member Goralski then asked if this is in compliance with what is allowed now, and Mr. Fellman's response was yes.

CHAIR VAIL asked the applicant contact if he had any knowledge of an HOA or if the original developer ran the HOA until there are enough properties occupied and becomes an HOA or has CC&Rs that might apply. He responded that he didn't

think there were any covenants, and added that Odyssey Homes, Bob Kappes, headed the Association as well as recruitment of Board Members. But as far as he knows, there is no formal Board as of now.

CHAIR VAIL then inquired if at the time of the applicant's purchase or at the time of development, if he had seen any CC&Rs. Mr. Fellman replied that in every new subdivision and development there has to be some type of CC&Rs active, code related, but pretty generic, not specific. He also made mention that there probably are some CC&Rs.

COMMISSIONER MYERS wanted to know the number of models and the comparison in square footage and shape. Mr. Fellman let the Commissioner know that all the homes are unique, and different. He said that the average square footage is probably 4200 sq. ft. livable and up to 5000 sq. ft. Then Commissioner Myers asked if 4200 was the smallest and what the size of the home/lot in question is. The applicant contact, Mr. Fellman, let him know it was 4250, 4300, average size.

(Chair Vail opened public comment.)

MR. ROGER FITNESS, Celebrity Homes, stated that he believed that they had complied with the four criteria. The issue of NAOS is that it is unusable. He informed the Board that it was going to be a six-foot wall on the western boundary of the home because of the pool, as part of the city code. He remarked that the issue at hand is the request to move the wall out a bit to get further enjoyment of the backyard. The area to the east of the house is six or eight feet and slopes significantly and one can't really use the area. Mr. Fitness also commented that the house needs to be the size that it is because of property value.

CHAIR VAIL asked what was immediately to the north, the side yard of the house next door or the backyard. Mr. Fitness told the Chair it was access to the backyard, and that the line of sight of that home would not be obstructed at all.

CHAIR VAIL found no need for rebuttal.

(Chair Vail closed public comment.)

BOARD MEMBER JONES believed that the criteria had been met and would be in favor of the variance.

COMMISSIONER PERICA disagreed with Commissioner Jones and did not believe the criteria had been met. She stated that there are special circumstances, but they don't apply to this property exclusively. Also, she doesn't think that authorizing the variance is necessary for the presentation of the applicant's privileges and rights that others have in the area. Commissioner Perica does believe the other two criteria have been met: applicant did not create the special

circumstances and the approval of the variance would not be a natural detriment to others. However, she did say that the Board's position is to adhere to the four criteria and doesn't believe that the applicant had done this, so she would have to deny the variance.

COMMISSIONER MYERS sympathizes with the applicant regarding NAOS but noted that all existed when lot and house were purchased, and most of the neighborhood has the same problem. The applicant does not meet all four of the required criteria. Commissioner Myers noted that since the Board can't make the rules, only follow them, he could not support the request for the variance.

BOARD MEMBER GORALSKI explained that she struggled with this case. She remarked that the property and neighborhood will be beautiful when completed. She believes that three of the four criteria have been met, not certain about the first required criteria: special circumstances to the property. Because of this uncertainty, she is still undecided.

CHAIR VAIL also explained that he too struggled with the first required criteria. But because of the combination of the key lot (corner lot) and the large wash (NAOS), to him, this combination does justify criteria number one, even though it is a stretch. He also states the six-foot wall, regardless, will not block anything. Based on the fact of special circumstances, Chair Vail is in favor of the proposal.

VICE CHAIR KUHSTOSS believes that the property is not appropriate for a variance. She states that property was purchased knowing the wash was there, and finds no special circumstance. Also, she makes reference to the neighbor to the north not wanting this request approved. For these reasons, Vice Chair Kuhstoss cannot support the variance request.

CHAIR VAIL extended the opportunity to request a continuance because of the absent member, if applicant feels the absentee could make a difference in the outcome.

MR. FITNESS informed the Board that all was understood regarding what was purchased. He said that the issue is one of enjoying the back yard area as opposed to the front yard. Mr. Fitness declined the opportunity to have a continuance.

Vice Chair Kuhstoss moved to deny the requested variance for not meeting the criteria. Commissioner Perica seconded the motion. The motion passed by failing to get the majority vote. The vote was three (3) to three (3), with Commissioners Myers and Perica and Vice Chair Kuhstoss voting "Nay".

CHAIR VAIL explained to the applicant contact the procedure to follow if he wanted to appeal the decision with the Maricopa County Superior Court.

NON-ACTION ITEM

4. Zoning Ordinance Update

As discussed in Study Session, Mr. Jones repeated for the record that this item will be put on the agenda for the hearing after the next in order to understand the outcome of the Environmentally Sensitive Lands text amendment.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:25 PM.

Respectfully submitted,

"For the Record" Court Reporters